

## **REMARKS/ARGUMENTS**

Applicant has received and carefully reviewed the Office Action of the Examiner mailed December 10, 2008. Claims 1-40 and 44-46 are pending, with claims 9, 16-18, 22-23, 30-32, and 35-37 previously withdrawn from consideration. Claims 1-8, 10-15, 19-21, 24-29, 33-34, 38-40, and 44-46 have been rejected. No claims amendments are presented herein. Favorable consideration of the following remarks is respectfully requested.

### ***Claim Rejections - 35 USC § 102***

Claims 1-2, 4-5, 8, 10, 13, 20-21, 24, 27, 34, 38-40, and 44-46 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gray et al. (U.S. Patent No. 6,461,370). Applicant respectfully traverses the rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (MPEP 2131).

In making the rejection, the Examiner states: “Gray discloses in figures 12-13 a medical device having the limitations as recited in the above listed claims, including: a connector 230 fixedly secures a proximal section (a proximal section occurs to the left side of 260 towards the segment 230) of a shaft or a corewire 204 to the distal section (the distal section occurs to the right side of 230 towards segment 260) and a filter 222 couples to the shaft, and where the proximal section comprises a first material which is a polyimide tube and the distal section comprises a second material, i.e., a coil spring (see col. 4, lines 54-65) which is different from the first material, where the connector comprises a third material, i.e., fabricated out of a spring material...other options include a lubricious plastic such as polyethylene (see col. 7, lines 51-56), and where the device further comprises a covering which is described as a polymer sheath or a bonding sleeve at step 140, figure. 10.” Applicant must respectfully disagree with the assertions of the Examiner.

First, the Examiner asserts that core wire 204 has a proximal section (to the left side of 260 towards the segment 230) and a distal section (to the right side of 230 towards segment 260) that are connected by element 230. Upon reviewing the specification of Gray et al., it appears that element 230 is disclosed to be a “bonded housing or pod 230 having an axially

open mouth 232” carried on the radial exterior of the distal portion of the core wire 204 (see column 7, lines 43-45). Core wire 204 is disclosed as “a solid stainless steel core wire 204” (see column 7, line 13). Independent claim 1 recites, in part, “an elongate shaft including a longitudinally extending proximal section having a distal end, a longitudinally extending distal section having a proximal end, and a connector connecting the proximal section and the distal section of the elongate shaft, wherein the connector is fixedly secured to both the proximal section and the distal section, securing the distal end of the proximal section with the proximal end of the distal section”. Nowhere do Gray et al. appear to disclose that the core wire 204 has two distinct sections, including distinct ends, which are joined together by a connector. The Examiner appears to have just arbitrarily selected areas where the proximal and distal sections of the claim allegedly “exist” in Gray et al. However, absent the discrete ends of the claim, and in view of the Gray et al. disclosure of a “solid” core wire, Applicant submits that Gray et al. cannot disclose at least these elements and that the Examiner appears to be attempting to create disclosure where there is none.

Next, the Examiner’s assertion that the proximal section may comprise a polyimide tube and the distal section may comprise a coil spring appears to be unfounded. Firstly, Gray et al. do not appear to disclose a core wire 204 having any form other than solid stainless steel (see column 4, lines 45-46 and column 7, line 13). Secondly, the asserted polyimide tube (column 4, lines 44-59) only appears to be disclosed when describing tubular shaft 38 (which correlates to shaft 206 of the embodiment of Figures 12-13), and not the solid core wire 34/204. Shaft 206 is axially movable with respect to housing 230 (see column 8, lines 7-18), therefore housing 230 cannot be disclosed as fixedly securing said polyimide tube to anything, let alone a distal coil spring. Applicant submits that the Examiner’s assertion is a clear error and that Gray et al. do not appear to disclose a shaft (or core wire) including a proximal section and a distal section comprising different materials, as recited, in part, in independent claim 10.

Applicant now refers to independent claim 24, which recites, in part, “a filter wire including a core member and a covering disposed over at least a portion of the core member, the core member including a proximal portion and a distal portion, the proximal portion having a first flexibility and including a distal end, the distal portion having a second flexibility different from the first flexibility and including a proximal end”. As discussed

above with respect to the core wire, Gray et al. only appear to disclose a “solid core wire”. Since Gray et al. do not appear to disclose distinct proximal and distal portions, with distinct ends associated with those section, Gray et al. appear to be missing those elements of claim 24. Furthermore, Gray et al. do not appear to make any disclosure regarding differing flexibilities of the proximal and distal portions, Applicant asserts that these elements of claim 24 are also not disclosed by Gray et al.

Independent claims 39, 40, and 44 contain similar language to those independent claims discussed above. For at least the same reasons previously discussed, Gray et al. do not appear to disclose each and every element of the claims.

As discussed above, Gray et al. do not appear to disclose all elements of independent claims 1, 10, 24, 39-40, and 44; therefore Gray et al. cannot anticipate the claims. Since claims 2, 4-5, 8, 13, 20-21, 27, 34, 38, and 45-46 depend from independent claims 1, 10, or 24, and add additional elements thereto, Applicants submit that these claims are also not anticipated by Gray et al. The Examiner is respectfully requested to withdraw the rejection.

#### ***Claim Rejections - 35 USC § 103***

Claims 3, 6-7, 9, 11-12, 14, 25-26, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gray et al. (U.S. Patent No. 6,461,370). Applicant respectfully traverses the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

As discussed above, independent claims 1, 10, and 24 are believed to be allowable over the cited reference. Since claims 3, 6-7, 9, 11-12, 14, 25-26, and 28 depend therefrom and add additional elements thereto, Applicants submit that claims 3, 6-7, 9, 11-12, 14, 25-26, and 28 are also allowable over the cited reference and respectfully request that the Examiner withdraw the rejection.

***Conclusion***

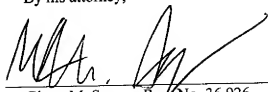
Reexamination and reconsideration are requested. It is respectfully submitted that all pending claims are in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,  
LAWRENCE WASICEK

By his attorney,

Date:

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